

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTHONY ANTONIO FOSTER

Plaintiff,

-against-

THE NEW YORK CITY PROBATION
DEPARTMENT and THE NEW YORK
STATE DIVISION OF PAROLE,

Defendants.

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**ORDER ADOPTING REPORT
AND RECOMMENDATION**

11-CV-4732 (KAM) (JMA)

MATSUMOTO, United States District Judge:

On September 23, 2011, *pro se* plaintiff Anthony Antonio Foster ("plaintiff"), a prisoner at the Washington Correction Facility, initiated this civil rights action pursuant to 42 U.S.C. § 1983 against the New York City Probation Department and the New York State Division of Parole (the "NYSDOP"). (See generally ECF No. 1.) On October 13, 2011, plaintiff requested to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 3.) On November 28, 2011, the court granted plaintiff's *in forma pauperis* request, dismissed with prejudice plaintiff's claims for monetary damages against both defendants pursuant 28 U.S.C. §§ 1915A and 1915(e)(2)(B), but permitted plaintiff to proceed with his claim for injunctive relief against the NYSDOP alone (hereinafter "defendant"). (ECF No. 5, Order, dated 11/28/2011.)

Pursuant to the court's scheduling order dated

February 24, 2012 (see Order, dated 2/24/2012), defendant served plaintiff with its motion to dismiss for lack of jurisdiction and for failure to state claim, plaintiff opposed defendant's motion, defendant served its reply on plaintiff and then filed the fully briefed motion via ECF on April 16, 2012. (See generally ECF Nos. 13-16.) On September 5, 2012, the court referred defendant's fully briefed motion to dismiss to Magistrate Judge Joan M. Azrack for a report and recommendation. (Order Referring Motion, dated 9/5/2012.)

DISCUSSION

Presently before the court is a Report and Recommendation issued by Magistrate Judge Azrack on March 7, 2013, recommending that the court grant defendant's motion to dismiss and dismiss all of plaintiff's claims with prejudice. (ECF No. 18, Report and Recommendation, dated 3/7/2013 ("R&R"), at 2, 12-13.)

As explicitly noted at the end of the Report and Recommendation, any objections to the Report and Recommendation were to be filed within fourteen (14) days of receipt of the Report and Recommendation. (R&R at 12.) Magistrate Judge Azrack's Report and Recommendation further directed the clerk of court to serve a copy of the Report and Recommendation upon the *pro se* plaintiff by (1) overnight mail at his last known address post-incarceration (obtained from defendant); and (2) regular

mail at plaintiff's former prison address, which is the most recent address listed for plaintiff on the ECF filing system. (See ECF No. 17, Plaintiff's Notice of Change of Address, filed 7/27/2012.) Although the copy of the Report and Recommendation sent to plaintiff's former prison address was returned marked "undeliverable" because plaintiff is no longer incarcerated (see ECF No. 20, Notice of Mail Returned As Undeliverable, filed 3/21/2013), there are no apparent issues with service of the copy of the Report and Recommendation sent to plaintiff's last known address post-incarceration. (See ECF No. 19, Clerk of Court's Certificate of Service, filed 3/7/2013.) The period for filing objections has now expired, see Fed. R. Civ. Proc. 6(d), and no objections to Magistrate Judge Azrack's Report and Recommendation have been filed by either party.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon review of Magistrate Judge Azrack's thorough and

well-reasoned Report and Recommendation and the record in this case, and considering that neither party has objected to any of Magistrate Judge Azrack's recommendations, the court finds no clear error in the Report and Recommendation and hereby affirms and adopts it as the opinion of the court.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss the complaint is granted and plaintiff's claims are dismissed, with prejudice. The Clerk of the Court is respectfully requested to enter judgment in favor of defendant and against the plaintiff and to close this case.

Additionally, the Clerk of the Court is respectfully requested to serve a copy of the Judgment, this Memorandum and Order, and an appeals packet on the *pro se* plaintiff at his last known address post-incarceration, and note service of the same on the docket. Plaintiff may file a notice of appeal of this Memorandum and Order within thirty (30) days of the date of the entry of the judgment, as specified in the appeals packet.

SO ORDERED.

Dated: March 30, 2013
Brooklyn, New York

 /s/
Kiyo A. Matsumoto
United States District Judge
Eastern District of New York